

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY  
CAMDEN VICINAGE

FREDERICO GONZALEZ,	:	CIV. NO. 20-5448 (RMB)
	:	
Petitioner	:	
	:	
v.	:	<b>MEMORANDUM AND ORDER</b>
	:	
WARDEN DAVID ORTIZ,	:	
	:	
Respondent	:	

This matter comes before the Court upon Petitioner Federico Gonzalez's emergency motion for reconsideration of the Court's Order denying his petition for writ of habeas corpus under 28 U.S.C § 2241 ("Emergency Motion.") (Dkt. No. 15.) Petitioner, a prisoner in the Federal Correctional Institution in Fort Dix New Jersey ("FCI-Fort Dix") is proceeding pro se. For the reasons discussed below, the Court will construe the motion for reconsideration as a new habeas petition and direct Respondent to file an answer.

I. BACKGROUND

On May 1, 2020, Petitioner filed a "Motion for Emergency Order Order to Order BOP to Release Petitioner Due to Potential Death from Coronavirus." (Dkt. No. 1.) The Court construed the motion as a petition for writ of habeas corpus under 28 U.S.C. § 2241. (Order, Dkt. No. 2.) Respondent filed an answer on May 14, 2020, and Petitioner filed an amended petition and memorandum on May 22,

2020 (Dkt No. 5), followed by a reply brief and two evidentiary declarations (Dkt. Nos. 6, 7 and 9.) By Opinion and Order dated June 22, 2020, the Court dismissed the amended petition without prejudice for failure to exhaust administrative remedies. (Opinion, Dkt. No. 10; Order, Dkt. No. 11.) Plaintiff appealed to the Third Circuit Court of Appeals on July 1, 2020. (Notice of Appeal, Dkt. No. 12.) On October 9, 2020, the Third Circuit issued a certified order in lieu of a formal mandate, dismissing the appeal for failure to pay the filing fee. (USCA Order, Dkt. No. 14.)

## II. Motion for Reconsideration

Federal Rule of Civil Procedure 59(e) provides that a motion to alter or amend a judgment may be filed "no later than 28 days after the entry of the judgment." The Court denied the amended petition without prejudice on June 22, 2020, and the Third Circuit Court of Appeals dismissed Petitioner's appeal on October 9, 2020. Petitioner's motion for reconsideration is untimely.

## III. The Motion is Construed as a Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241 Based on Changed Circumstances

The Court denied Petitioner's amended petition without prejudice, and Petitioner now presents changed circumstances that he submits entitle him to habeas corpus relief. The most significant of the changed circumstances alleged are that on October 26, 2020, after 230 inmates were transferred from FCI

Elkton to FCI Fort Dix, 126 inmates at Fort Dix tested positive for COVID 19, including inmates in the east side of the prison where Petitioner is housed. Petitioner suffers from cancer and Type I diabetes, which are risk factors for serious health risks posed by COVID 19. Thus, the Court will treat the emergency motion as a new petition and direct the Clerk to open a new habeas action.

**IT IS** therefore on this 10th day of November 2020,

**ORDERED** that the Clerk shall file Petitioner's emergency motion for reconsideration in a new action under 28 U.S.C. § 2241, with the docket entry "Petition for Writ of Habeas Corpus Under 28 U.S.C. § 2241" and the Clerk shall file a copy of this Order in the new action; and it is further

**ORDERED** that the Clerk shall serve a copy of Petitioner's Emergency Motion (Dkt. No. 15), which is construed by the Court as a petition for writ of habeas corpus under 28 U.S.C. § 2241, and serve a copy of this Order upon Respondent, the warden of FCI-Fort Dix, by regular mail, with all costs of service advanced by the United States; and it is further

**ORDERED** that the Clerk shall forward a copy of Petitioner's Emergency Motion (Dkt. No. 15) and this Order to the Chief, Civil Division, United States Attorney's Office, at the following email address: USANJ-HabeasCases@usdoj.gov; and it is further

**ORDERED** that within seven (7) days of the date of the entry of this Order, Respondent shall file and serve an Answer which

responds to the allegations and grounds in the Petition and which includes all affirmative defenses Respondent seeks to invoke, together with certified copies of all documents necessary to resolve Petitioner's claims and any affirmative defenses; and it is further

**ORDERED** that, to avoid administrative termination of this action, upon receipt of this Order Petitioner shall submit to the Clerk a \$5 filing fee, pursuant to 28 U.S.C. § 1914(b), or shall alternatively file an application to proceed *in forma pauperis* under 28 U.S.C. § 1915(a); and it is further

**ORDERED** that the Clerk shall serve a copy of this Order, together with a blank form "Affidavit of Poverty and Certification (Habeas Corpus)" on Petitioner by regular U.S. mail.

s/Renée Marie Bumb  
**RENÉE MARIE BUMB**  
**United States District Judge**